(2)

No. 85-693

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.
Petitioner,

VS.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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STATEMENT OF THE CASE

This products liability action arises out of a motorcycle accident that occurred in Solano County, California, in 1978. One California resident, Ruth Moreno, was killed and another California resident, Gary Zurcher, was severely injured when a sudden loss of air in the rear tire of Zurcher's motorcycle caused Zurcher to lose control and fall in front of a truck and trailer rig. Plaintiff, alleging that the motorcycle tire tube was defective, filed suit against, *inter alia,* Cheng Shin Rubber Industrial Company, Ltd. (Cheng Shin), the manufacturer of the tire tube.

Cheng Shin is a Taiwanese corporation that manufactures tire tubes. In manufacturing its product, Cheng Shin purchases tire tube valves from other companies and incorporates them into tire tubes which are marketed throughout the world. Cheng Shin

distributes a substantial number of its tire tubes into the United States. Approximately twenty percent of its sales in the United States are made in California.

Asahi Metal Industries Company, Ltd. (Petitioner), is a Japanese manufacturer of tire tube valves. Petitioner sold 1,350,000 valves to Cheng Shin between 1978 and 1982. All sales occurred in Taiwan, and the valves were shipped from petitioner in Japan to Cheng Shin in Taiwan. However, when these sales were made, petitioner was aware that Cheng Shin would market its tire tubes with petitioner's valve stems in the United States and California.

Cheng Shin is not petitioner's exclusive purchaser of tire tube valves. Other purchasers include Honda, Bridgestone, Kenda, Yokohama, and I.R.C., all of whom market in the United States and California.

In February and March of 1983, two samplings of tire tubes were made at two different California businesses. The February sampling found nearly 250 motorcycle tire tubes with valves manufactured by petitioner. The March sampling disclosed that, of 97 tire tubes inspected, 21 (or 22%) had valves manufactured by petitioner.

Subsequent to plaintiff's filing of this suit, numerous cross-complaints were filed, including one by Cheng Shin seeking indemnity against petitioner. Service was properly made on petitioner in Japan. Petitioner then moved to quash service of the summons and complaint which was denied by the trial court. Petitioner then sought and obtained a Writ of Mandate from the California Court of Appeals ordering the trial court to quash service of the summons and complaint. Cheng Shin then filed a petition for hearing to the Supreme Court of California which was granted. The Supreme Court of California reversed the ruling of the Court of Appeals. This had the effect of reinstating the original ruling of the trial court denying petitioner's motion to quash service of the summons and complaint. In making its determination, the Supreme Court of California cited and followed the precedent established by this Court in *International Shoe Company v. Washington,* 326 U.S. 310 (1945), and its progeny. Specifically, the Court found that petitioner's conduct

and activities were such that it did have sufficient minimum contacts with California and that it was fair and reasonable to subject petitioner to California jurisdiction. (*Asahi Metal Industry Company, Ltd. v. Superior Court* (1985) 39 C.3d 35, 53-54.)

I

INTRODUCTION

Petitioner argues that this Court should grant its petition for a Writ of Certiorari because the decision of the Supreme Court of California is in conflict with both the decisions of this Court and the Federal Courts of Appeal. A thorough review of the facts as they apply to the requirements of due process, however, reveals that no such conflict exists. Such an analysis shows that the Supreme Court of California rendered its decision in accordance with the requirements of due process as set forth by this Court and followed by the Federal Courts of Appeal. As a result, California's exercise of jurisdiction over petitioner comports with the requirements of due process, thus making it unnecessary for this court to review this matter.

II

THE RULING OF THE SUPREME COURT OF CALIFORNIA COMPORTS WITH THE DECISIONS OF THIS COURT

A. The Governing Standards of Jurisdiction as Established by This Court

Over forty years ago, this Court established a two-pronged test to determine whether personal jurisdiction may be properly exercised over a defendant. First, due process requires that the defendant have certain minimum contacts so as to not to "offend 'traditional notions of fair play and substantial justice.' " (*International Shoe, Supra,* p. 316; citing *Milliken v. Meyer,* 311 U.S. 457, 463 (1940).) Subsequently, this Court held that the minimum contacts standard is satisfied where the defendant has "purposefully availed itself of the privilege of conducting activities

within the forum state, thus evoking the benefits and protections of its laws" (*Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

Second, due process further mandates that, "the relationship between the defendant and the forum must be such that it is 'reasonable . . . to require the corporation to defend the particular suit which is brought there' " (*World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 292 (1980); citing *International Shoe, Supra*, page 317.) It is essential that in all cases, "the 'quality and nature' of the defendants activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that state." (*Kulko v. Superior Court*, 436 U.S. 84, 92.) By this requirement, the Due Process Clause imposes a limitation upon state exercise of jurisdiction, "in its role, as guarantor against inconvenient litigation . . . " (*World-Wide Volkswagen, Supra*, page 292.)

However, the due process limitation has been substantially relaxed over the years in light of the developments in modern transportation and communication which have greatly reduced the defendant's burden in defending himself in a state where he engages in an economic activity (*McGee v. International Life Insurance*, 355 U.S. 220, 223 (1957)). Moreover, these historical developments "have only accelerated in the generation since [*McGee*] was decided." (*World-Wide Volkswagen, Supra*, page 293.)

In the end, however, the determination of whether the standards established by due process and *International Shoe* have been satisfied must be decided on a case by case basis. *Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445. These standards are:

> "not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." (*Kulko, Supra*, page 92.)

The focus, therefore, is on "the relationship among the defendant, the forum, and litigation . . . [which becomes] the central concern of the inquiry to personal jurisdiction" (*Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). As a result, an out-of-state defendant is subject to the jurisdiction of the forum state when he "purposefully directed" his activities at residents of the forum, (*Keeton v.*

Hustler Magazine, Inc., 465 U.S. ____; 79 L.Ed. 2d 790; 104 S.Ct. 1473 (1984)) and the litigation results from the alleged injuries that "arise out of or relate to" those activities, *Helicopteros Nationales de Columbia, S.A. v. Hall*, 466 U.S. ____; 80 L.Ed. 2d 404; 104 S.Ct. 1868 (1984). *Burger King Corp. v. Rudzewicz*, 471 U.S. ____; 85 L.Ed. 2d 528, 541; 105 S.Ct. 2174 (1985).

Finally, this Court has affirmed the application of these standards to products liability cases (*World-Wide Volkswagen, Supra*, page 291). It is with these principles in mind that the determination of whether petitioner is subject to California jurisdiction can be made.

B. Pursuant to the Standards of Jurisdiction as Established by This Court, Petitioner Has Sufficient Minimum Contacts to Be Properly Subject to California Jurisdiction

1. Petitioner Could Reasonably Anticipate Being Hailed Into Court in California

Petitioner argues that this Court completely rejected foreseeability as a constitutional basis for exercising personal jurisdiction *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980).[1] This simply is not the case. Although the foreseeability argument proffered by respondents in *World-Wide* was rejected, this Court nonetheless provided that foreseeability is not wholly irrelevant to the determination of jurisdiction. As this Court explained,

> "The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there (*Ibid*; citing *Kulko v. California Superior Court*, 436 U.S. 84, 97-98 (1978) and *Shaffer v. Heitner* 433 U.S. 186, 216 (1977)).

A corporation can reasonably anticipate being sued in the forum state when its activities and conduct "purposefully avails [the

[1] *See*, Petition for A Writ of Certiorari, pp. 7-8.

corporation] of the privilege of conducting activities within the forum state" (*World-Wide, Supra,* page 297; citing *Hanson v. Denckla,* 357 U.S. 235, 253 (1958)).[2] Thus, where the corporation has a reasonable expectation that its product will be purchased in the forum state, it is amenable to the forum state's jurisdiction. (*Id,* page 298; citing *Gray v. American Radiator and Standard Sanitary Corp.* (1961) 22 Ill.2d 432, 176 N.E.2d 761.)[3]

Applying the foreseeability concept as accepted by this Court to the facts of this case, it is clear that petitioner should have reasonably anticipated being hailed into court in California. Petitioner is a manufacturer of component parts. As a result, it sits at the beginning of the chain of events leading to the sale to the consumer, which causes petitioner to be dependent on the national and foreign marketplace for the sale and use of its product (*See, Rockwell Int'l Corp. v. Costruzioni* (E.D. Penn; 1982) 553 F.S. 328, 332; quoting Developments-Jurisdiction, 73 Harv.L.Rev. 909, 929 (1960)).[4] Furthermore, in the four year period of 1978 to 1982, petitioner sold a total of 1.35 million tire valves to Cheng Shin. It is uncontroverted that petitioner knew that its valves were being incorporated into Cheng Shin's product and then being placed into the United States and California market places. It is also uncontroverted that twenty percent of

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[2] In *World-Wide,* these factors were applied to an automobile retailer and its wholesale distributor whose businesses were limited to the states of New York, New Jersey, and Connecticut. The manufacturer, Audi, did not seek review in this Court.

[3] *Accord, Nelson v. Park Ind., Inc.* (7th Cir. 1983) 717 F.2d 1120; *Hedrick v. Daiko Shoji Co., Ltd.* (9th Cir. 1983) 715 F.2d 1355; *United States v. Toyota* (C.D. CA 1983) 561 F.Supp. 354; *Rockwell Int'l Corp. v. Costruzioni* (E.D. PA 1982) 553 F.Supp. 328, 334; *Tedford v. Grumman American Aviation Corp.* (N.D. MS 1980) 488 F.Supp. 144.

[4] Thus, a distinction is to be made between retailers, such as Seaway in *World-Wide,* who conduct their businesses in limited markets *vis-a-vis* the manufacturer who derives economic benefit from a much broader market. (*See,* § II.B.2., *post; Nelson v. Park Ind., Inc.,* 717 F.2d 1120, ____ (7th Cir. 1983); *Oswalt v. Scripto, Inc.,* 616 F.2d 191, 200 (5th Cir. 1980); *Novinger v. E.I. DuPont de Nemours & Co., Inc.,* 89 F.R.D. 588, 593 (1981).

Cheng Shin's sales in the United States were made in California. Thus, the placement and sale of petitioner's product in California are not isolated occurrences.[5]

Also, it is undisputed that petitioner sold its product to such worldwide marketers as Honda, Yokohama, Bridgestone, and Kenda, who also make extensive sales in the United States and California market places. It seems highly unlikely that petitioner would be unaware that these worldwide marketers are incorporating petitioners product into theirs and selling them inside the United States and California.

Finally, a sampling of a California Cycling Shop revealed almost 250 Kenda tire tubes with valve stems manufactured by petitioner. A second sampling, also of a California Cycling Shop, disclosed that of 53 tire tubes Cheng Shin had manufactured, petitioner had manufactured the valves of just under a quarter.

It is uncontroverted that a substantial number of petitioner's product were available in the California marketplace. It is also undisputed that petitioner knew that a significant number of its valves were being marketed in the United States by various tire tube manufacturers. Obviously, Asahi knowingly benefitted economically from the systematic and continued sales of its component part by said manufacturers. Rather than abating or limiting its sales to avoid exposure to suit in the United States and California, petitioner continued to sell its product to such international marketers as Cheng Shin, Honda, Yokohama, Bridgestone, and Kenda.

Where a manufacturer's efforts to sell its products serves, directly or indirectly, "the market for its product in other States,

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[5] In this respect, *World-Wide* is distinguishable. The holding in *World-Wide* relies on the lack of evidence indicating that the presence in Oklahoma of an automobile sold by the defendants therein were anything but an isolated occurrence (*See,* pp. 289 and 295). Unlike *World-Wide,* jurisdiction over petitioner is not based upon "one, isolated occurrence and whatever inferences can be drawn therefrom . . . " (p. 295). Rather, jurisdiction here is based upon petitioner's intentional efforts to serve the United States, including California, market with its product.

it is not unreasonable to subject it to suit in one of those states if its allegedly defective merchandise has been the source of injury to its owner or to others" (*World-Wide Volkswagen, Supra,* page 297.)[6] Therefore, it is correct to state that petitioner could reasonably anticipate being sued in California.

2. Petitioner's Purposeful Conduct in Entering Its Product into the Stream of Commerce Headed for California Subjects It to California Jurisdiction

Petitioner argues that the so-called stream of commerce theory of exercising jurisdiction is inapplicable to this case because petitioner did *not* attempt to insulate itself nor did it have an indirect marketing scheme designed to avoid California jurisdiction.[7] However, this Court has stated that:

> "The forum state does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." (*World-Wide Volkswagen, Supra,* page 297-298; citing *Gray v. American Radiator & Standard Sanitary Corp.,* 22 Ill.2d 432, 176 N.E.2 761 (1961).)

In *Gray,* it was held that Illinois had jurisdiction over a foreign corporation which did no business in Illinois. The Court reasoned that because use of the corporation's product in Illinois was not isolated and that there existed a "reasonable inference" that there

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[6] Accord, *Nelson, Supra,* p. 1126; *Oswalt, Supra,* p. 200; *Sells v. Int'l Harvester Co., Inc.,* 513 F.2d 762, 763 (5th Cir. 1975); *Coulter v. Sears, Roebuck and Co.,* 426 F.2d 1315, 1318 (5th Cir. 1970); *Duple Motor Bodies, Ltd. v. Hollingsworth,* 417 F.2d 231, 235 (9th Cir. 1969); *Rockwell, Supra,* p. 332-333; *Keckler v. Brookwood Country Club,* 248 F.Supp. 645, 649-650 (1965); *Gray v. American Radiator & Standard Sanitary Corp.,* 22 Ill.2d 432.

Cases have also exercised jurisdiction without requiring the defendant to have knowledge of where his product is going. *Bean Dredging Corp. v. Dredge Tech. Corp.,* 744 F.2d 1081 (5th Cir. 1984); *Bach v. McDonnell Douglas, Inc.,* 468 F.Supp. 521, 526 (1979); *Novinger, Supra,* p. 593.

[7] *See,* Petition for A Writ of Certiorari, pp. 8-10.

was substantial use and consumption of the defendant's product in Illinois, defendant benefited from the laws of the state. (*Gray, Supra,* page 766.) Furthermore, jurisdiction was proper because

> "With the increasing specialization of commercial activity and the growing interdependence of business enterprises, it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this state to justify a requirement that he defend here." (*Ibid*)

Applying the reasoning of *World-Wide Volkswagen* and *Gray* to the instant case, it is evident that petitioner is subject to the jurisdiction of California pursuant to the stream of commerce theory. As in *Gray,* petitioner's contacts with California cannot be characterized as isolated occurrences. Petitioner not only sold its tire valves to Cheng Shin, which it knew made extensive sales in California, but petitioner also sold its product to several other worldwide marketers. Moreover, from these transactions, it can be reasonably inferred that there was substantial use and consumption of petitioner's product in California, from which petitioner knowingly benefitted economically. Thus, like the foreign corporation in *Gray,* petitioner has derived and enjoyed the benefits and protections of the laws of California insofar as petitioner has been directly affected by the transactions of its products in California.[8] (See, *Gray, Supra,* page 766; and *Hanson v. Denckla, Supra,* page 253.)

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[8] Accord, *Nelson, Supra,* p. 1125-26; *Oswalt. Supra,* p. 200; *Sells v. Int'l Harvester Co., Inc.,* 513 F.2d 762, 763 (5th Cir. 1975); *Coulter v. Sears, Roebuck and Co.,* 426 F.2d 1315, 1318 (5th Cir. 1970); *Duple Motor Bodies, Ltd. v. Hollingsworth,* 417 F.2d 231, 235 (9th Cir. 1969); *Rockwell, Supra,* p. 332-333; *Keckler v. Brookwood Country Club,* 248 F.Supp. 645, 649-650 (1965); *Gray v. American Radiator & Standard Sanitary Corp.,* 22 111.2d 432.

Petitioner's argument relies on the assertion that since it has neither attempted to insulate itself nor use an indirect marketing scheme to avoid jurisdiction, it is not subject to jurisdiction under the stream of commerce theory.[9] Analysis of the facts betrays petitioner's theory. By selling its product to such worldwide marketers as Cheng Shin, Honda, and Bridgestone, which it knows makes substantial sales in the United States and California, petitioner has, in effect, insulated itself from the jurisdiction of every state it indirectly serves despite the extensive use of its valves throughout the United States. The result would be that if any one of these valves is defective and an injured consumer would be precluded from seeking redress against the petitioner unless the injured consumer is willing and able to bring suit in Japan. By maintaining this marketing scheme of selling to foreign marketers, petitioner has effectively precluded liability to the American consumer for any injuries caused by its defective product.[10]

Moreover, petitioner claims that it does not design its product in anticipation of it being used in the United States.[11] Uncontroverted facts substantiate that Asahi sells its valves to Cheng Shin and numerous other manufacturers with the knowledge that it will

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Cases have also exercised jurisdiction without requiring the defendant to have knowledge of where his product is going. *Bach v. McDonnell Douglas, Inc.*, 468 F.Supp. 521, 526 (1979); *Novinger, Supra*, p. 593.

[9] *See.* Petition for a Writ of Certiorari, p. 9.

[10] In *Bach v. McDonnell Douglas, Inc.*, 468 F.Supp. 521 (1979), jurisdiction was exercised over Martin-Baker, an English manufacturer of airplane ejector seats. In so ruling, the District Court observed that

> "(a)ssuming that Martin-Baker does not 'do business' in California, it appears that no United States District Court in that state would have venue. Perhaps it is possible for this matter to be litigated in England. However, the expense and inconvenience caused by trial of a case thousands of miles from the site of take-off, accident, and plaintiff's residence, offends the notion of fairness and makes the Court unwilling to rule out an Arizona forum simply because of the possible alternative of an English forum." (*id.*, p. 527.)

[11] *See.* Petition for A Writ of Certiorari, p. 9-10.

benefit from extensive marketing efforts resulting in sales of petitioner's component product in the United States, including California.

Also, petitioner states that it does not comply with California law in manufacturing its valves.[12] The record demonstrates no citations of such laws in California regulating the manufacture of tire tube valves.

In short, through the utilization of this distribution system, petitioner has developed, or taken advantage of, a marketing scheme which effectively insulates it from the jurisdiction of any of the United States, including California, despite the widespread use of its product throughout this country. The result of this system is that petitioner has placed its product into the stream of commerce with the expectation and knowledge that its product will be marketed in the United States, including California. Because of this purposeful conduct, California has properly exercised jurisdiction over petitioner.

C. It Is Fair and Reasonable for California to Exercise Jurisdiction Over Petitioner

Petitioner asserts that it is not fair and reasonable for it to be subject to California jurisdiction.[13] Its argument is premised on the allegation that the Supreme Court of California improperly found a California State interest in this action. Petitioner argues that the Court first assumed that California had personal jurisdiction over petitioner in order to determine choice of law. Then, petitioner argues, the Court used choice of law to determine that exercise of jurisdiction was proper.

As the Supreme Court of California correctly points out, having determined that a defendant has sufficient minimum contacts with the forum state, the next determination is whether it is fair and reasonable to subject that defendant to the jurisdiction of the forum state.

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[12] *See.* Petition for A Writ of Certiorari, p. 10.

[13] *See.* Petition for A Writ of Certiorari, pp. 10-15.

> "The court must balance the 'the inconvenience to the defendant in having to defend itself in the forum state against both the interest of the public in suing locally and the inter-related interest of the state in assuming jurisdiction." (*Asahi Metal Industry Co., Ltd. v. Superior Court* (1985) 39 Cal.3d 35, 52.)

The Court states three reasons for its determination that it is fair and reasonable to exercise jurisdiction over petitioner.

> "First, California has a strong interest in protecting its consumer by ensuring that foreign manufacturers comply with the state's safety standards." (*Asahi, Supra*, page 53.)

Petitioner asserts that this is an application of California law over it and Cheng Shin.[14]

To the contrary, by this statement, the Court recognizes that if California cannot exercise personal jurisdiction over petitioner, California leaves its consumers without redress against foreign manufacturers whose defective products have caused injuries within California. Again, it is uncontroverted that thousands of petitioner's product have entered California through petitioner's marketing procedures. Thus, many California citizens are subject to potential injury and death from defective valves manufactured by the petitioner. If California is unable to exercise jurisdiction over petitioner, an injured plaintiff's only remedy lies in the courts of Japan.[15] Certainly, it is more burdensome for an injured plaintiff to bring suit in Japan than it is for petitioner to defend in California.

Moreover, if petitioner is not subject to California jurisdiction, then it logically follows that no state could constitutionally subject petitioner to its jurisdiction for injuries caused by petitioner's defective product despite the continued use of petitioner's product throughout the United States. Thus, anyone injured by petitioner's product in the United States would be forced to litigate in Japan to seek their remedies.[16]

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[14] *See*, Petition for A Writ of Certiorari, p. 11.

[15] *See*, Footnote 10, p. 10, *ante*.

The California Supreme Court's second and third reasons for finding it fair and reasonable to subject petitioner to California jurisdiction disclose the interest California has in the orderly administration of its laws and in avoiding the possibility of inconsistent verdicts. (*Asahi, Supra*, page 53.) In this case, although the original plaintiff is no longer involved, two other suits for indemnity arising out of these same circumstances still exist against petitioner. Since these other suits are brought by California corporations, it is apparent that California still maintains a substantial interest in this suit despite plaintiff's absence. Thus, California's interest in avoiding a multiplicity of suits and inconsistent verdicts is further indication that it is fair and reasonable to subject the petitioner to the jurisdiction of California; especially with regard to a matter which not only occurred in California but which also involves numerous California parties.[17]

Finally, as the Supreme Court of California points out that petitioner has failed to present any evidence showing that it would be inconvenienced by litigating this matter in California. Thus, the Court was able to properly determine that it was fair and reasonable for California to exercise jurisdiction over petitioner.

D. California's Exercise of Jurisdiction Over Petitioner Is Not Based on the Unilateral Activity of Others

Lastly, petitioner argues that it is not subject to the jurisdiction of California because its product entered this country through the unilateral activity of Cheng Shin.[18] In support of this, petitioner cites *Hanson v. Denckla, Supra*, page 253, as prohibiting such an

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[16] *See, Jay, "Minimum Contacts" As A Unified Theory of Personal Jurisdiction: A Reappraisal*, 59 N.C.L. Rev 429, 446-448 (1981); *Volvo of America Corp. v. Wells*, (C.A. KY, 1977) 551 S.W.2d 826, 828.

[17] *See, Sells v. Int'l Harvester Co.*, 513 F.2d 762 (5th Cir. 1975) in which the Court exercised jurisdiction over a fan blade manufacturer based on exactly the same procedural facts as those involved in this suit.

[18] *See*, Petition for A Writ of Certiorari, p. 8.

exercise of jurisdiction.[19] However, petitioner omits the sentence following the quoted language:

> "The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws (*Ibid*; citing *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

The facts of this case indicate that petitioner, by the quality and nature of its conduct and activities has purposefully availed itself of the protection and benefits of California law (*See*, § IB1 and § IB2, ante). That petitioner did not deal directly with the California market place does not camouflage the fact that petitioner, when it sold its product to Cheng Shin, knew that its product would be sold in the United States, including California.

Despite the fact that it only indirectly served the California market place, petitioner has nonetheless engaged in economic activity and knowingly benefitted from the marketing efforts of others in the United States and California. Thus, petitioner has purposefully availed itself of the protections and benefits of California law and is therefore properly subject to California jurisdiction (*Hanson v. Denckla, Supra*, p. 253; *Gray v. Am. Radiator & Std. Sanitary Corp., Supra*, p. 766).[20]

E. Conclusion

Based on the foregoing, it is manifestly clear that California's exercise of jurisdiction over petitioner is consistent with the requirements of due process as set forth in *International Shoe* and its progeny. Therefore, this Court should deny this petitioner insofar as it avers that an inconsistency exists between the rulings of this Court and that of the Supreme Court of California.

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[19] *Ibid.*

[20] *See*, also §§ II.B.1 & 2, *ante*.

III

THE RULING OF THE SUPREME COURT OF CALIFORNIA IS CONSISTENT WITH THE RULINGS OF THE FEDERAL COURTS OF APPEAL

Petitioner maintains that an irreconcilable conflict exists between the State and Federal Courts in applying the standards enunciated by *International Shoe* to foreign manufacturers.[21] In support of this contention, petitioner cites three Federal cases which, it argues, directly conflict with this and other State Court decisions. Moreover, petitioner states, without citing any authority, that due process requires uniform results in the application of the "minimum contacts" standards required by due process.

This position ignores the clear holding of this Court that due process itself, by its very nature, is a flexible standard (*Board of Curators, University of Missouri v. Horowitz*, 435 U.S. 78, 86; 55 L.Ed.2d 124; 98 S.Ct. 948 (1978) and that higher standards than those required by the due process clause may be adopted. *Lassiter v. Dept. of Social Services of Durham County*, 452 U.S. 18, 33; 68 L.Ed.2d 640; 101 S.Ct. 2153 (1981).

The objective of the "minimum contacts" standards is to preclude courts from exercising jurisdiction beyond the limitations of due process (*World-Wide Volkswagen, Supra*, page 292.) By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," [citation] the due process clause

> "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit" [citation]. (*Burger King Corp. v. Rudzewicz* 471 U.S. ____; 85 L.Ed.2d 528, 540; 105 S. Ct. 2174 (1985))

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[21] *See*, Petition for a Writ of Certiorari, pp. 15-18.

The goal is for these standards to be uniformly applied to the question of jurisdiction, not for the results to be exactly the same in every case and court.[22]

Thus, in *Bean Dredging Corp. v. Dredge Tech. Corp.*, 744 F.2d 1081 (5th Cir. 1984), a Washington manufacturer was held subject to jurisdiction in Louisiana despite its having no direct contacts with that State. In *Bean*, Rogers-Olympic was the manufacturer of steel castings in the State of Washington. These castings were then sold to, *inter alia*, Abex Corp. who incorporated these castings into hydraulic cylinders in California. The cylinders were eventually used as part of a dredge constructed by a third company in Louisiana. An action was brought in Louisiana for the allegedly defective dredge. Arguing against Louisiana's ability to exercise jurisdiction over it, Rogers-Olympic pointed out that it had no knowledge of what product its castings would be incorporated into and that it neither sold directly to any Louisiana company nor did it know if any of its castings went to Louisiana. Furthermore, no one from Louisiana ever came to Washington to negotiate with Rogers-Olympic, Rogers-Olympic did not solicit work in Louisiana, and it did not own any property in Louisiana. (*Id*, page 1082.)

Nevertheless, the Fifth Circuit found Rogers-Olympic subject to Louisiana jurisdiction. Following the lead of *Nelson v. Park Ind., Inc.*, (7th Cir.; 1983) 717 F.2d. 1120[23] and *Oswalt v. Scripto,*

[22] *See*, for example, *Bach v. McDonnell Douglas, Supra*, 468 F.Supp. at 527 wherein it was stated that "there is no precise formula for application of [minimum contacts] criteria to a particular set of facts."

[23] In *Nelson*, a Hong Kong shirt manufacturer, United, was held subject to Wisconsin jurisdiction. United had manufactured the shirt in Hong Kong, sold it to Bunnan, also a Hong Kong corporation, in Hong Kong. Bunnan, purchasing the shirt for Woolworth, delivered the shirt to a shipper selected by Woolworth.

The Seventh Circuit distinguished *World-Wide* on the basis that United was a manufacturer, an early actor in the stream of commerce, whereas the two *World-Wide* defendants were at the end of the stream of commerce distribution.

The Court held jurisdiction existed because United was aware of the distribution system and indirectly serving and deriving benefits from

Inc., (5th Cir.; 1980) 616 F.2d. 191,[24] the Court held that even though Rogers-Olympic had no control over the distribution of its product, it had made no attempt to limit the states in which its product would be used and did place its product into the "stream of commerce destined for retail sale in finished products throughout the United States." (*Bean, Supra*, page 1085.)

Likewise, in the present situation, petitioner, despite knowing that its product was headed for California, placed its product into the stream of commerce destined for retail sale and finished products throughout the United States, including California. As with Rogers-Olympic, petitioner made no attempt to limit the states in which its product would be purchased and used.

Petitioner, on the other hand, refers to *Humble v. Toyota Motor Company*, 578 F.Supp. 530 (N.D. Iowa 1982) aff'd, 727 F.2d 709, (8th Cir. 1984), which denied jurisdiction based on a fact pattern quite similar to the case at bar, as an example of an inconsistency which due process will not tolerate. The point to be made, however, is not whether the decisions are inconsistent with each other for this Court has recognized that absolute predictability and full assurance as to what conduct will subject a particular defendant to liability cannot be given. (*Burger King Corp, Supra*, p. 540; *World-Wide, Supra*, p. 297.) Rather, the point is that as long as the Courts properly apply the "minimum contacts" standard, a degree of predictability results and due process is not

Woolworth's national retail market. Thus, United should have "reasonably anticipate[d] being subject to suit in any forum within that market where the product caused injury." (*Nelson, Supra*, p. 1125-26.)

[24] In *Oswalt*, the Fifth Circuit exercised jurisdiction over Tokai-Seiki, a Japanese manufacturer of cigarette lighters. The lighter in question had been manufactured and sold to Scripto, the American distributor, in Japan. Distinguishing *World-Wide* as the *Nelson* court did, the Court found Tokai-Seiki subject to Texas jurisdiction because Tokai-Seiki knew of and utilized the distribution network of Scripto in the United States to indirectly serve the Texas market (*Oswalt, Supra*; 616 F.2d at p. 200). Moreover, Tokai-Seiki did nothing to avoid sales of its lighters in Texas. Quoting *World-Wide*, the Court found that Tokai-Seiki had delivered its product into the stream of commerce with the expectation that it would be purchased in Texas (*Ibid*).

violated. Thus, even where one Court applies these standards more restrictively than another Court (e.g. by requiring more contacts with the forum state, than another Court would require), no violation of due process results because the determination is made consistently with and within the limitations of the due process clause.

In determining whether to exercise jurisdiction over petitioner, the Supreme Court of California, as did the Federal Courts in *Bean* and *Humble*, acted in accordance with these principles.[25] Therefore, no conflict exists between these cases because each of them were determined consistently with the requirements of due process.

CONCLUSION

Petitioner's argument revolves around the assertion that the California Supreme Court's ruling to exercise jurisdiction over it is in violation of the requirements of the due process clause as established by *International Shoe* and its progeny. Petitioner maintains that the Supreme Court of California erroneously applied a foreseeability test, exercised jurisdiction based on activities not done by petitioner, improperly applied the stream of commerce theory of jurisdiction, and wrongfully used California law to determine jurisdiction. Finally, petitioner asserts that the California decision is also in conflict with several Federal Appellate Court decisions.

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[25] *See*, § II, *ante*.

On the contrary, the facts of this case clearly indicate that California's exercise of jurisdiction over petitioner is entirely consistent not only with the decisions of this Court but also with the decisions of the Federal Court of Appeals. In fact, this case simply does not offer any distinguishing factors which sets it apart from the multitude of cases already decided in the Federal and State Courts. Therefore, it is unnecessary for this Court to review this matter.

Respectfully submitted,

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